

**FILED**

SEP 15 2015

**In the Supreme Court of Iowa**

**Request for Public Comment on )  
Proposed New Rule of Criminal )  
Procedure 2.18(15) on )  
Alternate Jurors )**

**Order**

CLERK SUPREME COURT

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The Iowa Supreme Court received a request from the Muscatine County Attorney to consider a new approach to using alternate jurors in criminal jury trials that would be consistent with federal practice. The request arose from the declaration of a mistrial after commencement of deliberations when a sitting juror could no longer serve, and the trial court, pursuant to Iowa Rule of Criminal Procedure 2.18(15), had discharged the alternate jurors upon the jury's retirement to begin deliberations. Under Federal Rule of Criminal Procedure 24(c)(3), excused jurors may be replaced by alternates after deliberations have begun. The federal rules direct the court to instruct the jury to begin its deliberations anew with the alternate juror participating.

The supreme court directed its Advisory Committee on the Rules of Criminal Procedure to review and consider the request and make appropriate recommendations. The committee canvassed the practices of other states, thoroughly discussed and reviewed the implications of changing Iowa's rule, and recommends that the court replace the existing alternate juror rule with a new version of rule 2.18(15). The committee also recommends changing the rule's separate jury examination process for selection of alternate jurors.

The committee unanimously recommends this latter change, which conforms the rule to the often-common practice whereby alternate jurors are contemporaneously examined and selected with principal jurors. The committee also recommends, but with dissenting votes, that Iowa Court

Rule 2.18(15) be amended to permit an alternate juror to replace a principal juror after deliberations have begun.

The advisory committee's proposed new rule 2.18(15) is provided with this order. Also provided with this order is a memorandum from the committee that sets forth the committee's decision process and factors it considered in drafting the proposed new rule.

After consideration of the committee's recommendation and supporting materials, the court finds that the proposed new rule for alternate jurors should be published and that a period should be set for public comment on the proposed changes. The proposed new rule and committee memorandum are provided with this order and may be found on the Iowa Judicial Branch website at: [www.iowacourts.gov/About\\_the\\_Courts/Supreme\\_Court/Orders/](http://www.iowacourts.gov/About_the_Courts/Supreme_Court/Orders/). In addition, copies are available at the office of the Clerk of the Supreme Court, Judicial Branch Building, 1111 East Court Avenue, Des Moines, Iowa 50319.

Any interested organization, agency, or person may submit written comments. Comments about the proposed rule must refer to the specific rule number (for example, Rule 2.18(15)(b)) and the specific numbered line or lines to which the comments are directed. Comments sent by email must be emailed to **rules.comments@iowacourts.gov**, must state **"Alternate Juror Rule"** in the subject line of the email, and must be sent **as an attachment to the email in Microsoft Word format**. Instead of submission by email, comments may be delivered in person or mailed to the Clerk of the Supreme Court, Judicial Branch Building, 1111 East Court Avenue, Des Moines, Iowa 50319.

Any comments received may be posted on the Iowa Judicial Branch website.

**The deadline for submitting comments is 4:30 p.m. on November 16, 2015.**

Dated this 15th day of September, 2015.

The Supreme Court of Iowa

By Mark S. Cady  
Mark S. Cady, Chief Justice